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STATE OF VERMONT
GENERAL ASSEMBLY
GOVERNMENT ACCOUNTABILITY COMMITTEE

To: Vermont General Assembly
From: Government Accountability Committee
Date: January 2, 2018
Subject: January 2018 Report

Introduction

The Government Accountability Committee (GAC) focuses on how Vermont State government can be more accountable to Vermonters. Pursuant to [2 V.S.A. § 970\(g\)](#), this annual report sets forth GAC's activities and recommendations to the General Assembly. Below you will find a summary of the topics and recommendations discussed in this report, with corresponding details provided following this summary.

(1) Revising the indicators used in the State Outcomes Report.

Recommendation: Standing committees of jurisdiction should review and provide feedback on GAC's proposed indicator data for the State's outcomes set forth in Attachment A of this report, because the final indicators will be reported on in the next annual State Outcomes Report required by [3 V.S.A. § 2311](#).

(2) Using results-based accountability in the legislative process.

Recommendation: Standing committees of jurisdiction should conduct their committee work with a focus on results-based accountability, which includes being

familiar with the State Outcomes Report and discussing how proposed legislation would have a positive impact on the State's outcomes and their indicator data.

(3) Performance notes in bills.

Recommendation: Legislators and committees should consider including performance notes in appropriate bills. A performance note would generally describe the issue the bill is designed to address, the impact the bill is meant to have, and how Vermonters could measure that impact in the future.

(4) The Executive Branch's efforts in performance improvement.

Recommendation: The General Assembly should become more familiar with the efforts the Administration has undertaken to be more accountable regarding the State's performance on behalf of Vermonters. These efforts include the Governor's Program to Improve Vermont Outcomes Together (PIVOT) and an updated State Strategic Action Plan.

(5) Lessons learned in governmental structure as a result of EB-5.

Recommendation: Vermont State government should learn from the fraud alleged to have been committed in the State's EB-5 program in order to structure Vermont's government in a manner that would avoid a repeat of such an occurrence.

Overview of GAC's Purpose and Charge and RBA

The GAC was created in 2008 to focus specifically on establishing a system of greater accountability and effectiveness in State government. GAC's charge is set forth in [2 V.S.A. § 970](#). This statute requires the GAC to "recommend mechanisms for State government to be more forward-thinking, strategic, and responsive to the long-term needs

of Vermonters” and provides eight specific tasks in pursuit of this goal. These tasks generally include analyzing government effectiveness and specifically include determining that data-based program-level performance measures have been adopted for programs, assessing the effectiveness of population-level indicators in measuring progress in achieving population-level outcomes, and revising those indicators as necessary.

The terms “outcomes,” “indicators,” and “performance measures” are part of a common language of results-based accountability (RBA). To summarize, RBA is a performance accountability tool that involves setting goals; using data to measure progress in reaching these goals; analyzing how the data change over time; and determining what changes need to be made in order to improve that data and to therefore make better progress in reaching the goals.

In State government, RBA can be used at the population level (meaning Vermonters as a whole, or specific segments of Vermonters, such as youths) and the program level (meaning State programs). Different terminology is used at the two levels.

On the population level, the State has set “outcomes” (goals) for our populations, and “indicators” (data) help measure the State’s progress in reaching the outcomes. The State established its 10 outcomes in [3 V.S.A. § 2311](#), and pursuant to that statute, the Agency of Administration’s Chief Performance Officer (CPO) annually issues a State Outcomes Report that uses indicators approved by GAC for each outcome. A link to the 2017 State Outcomes Report can be found [here](#).

On the program level, “performance measures” (data) help demonstrate a program’s “results” (and therefore, how well a program is performing in pursuit of its

goals). The Governor is to describe performance measures for programs as part of the Governor's budget request pursuant to [32 V.S.A. § 307\(c\)\(2\)](#). A link to the Governor's FY 2018 Programmatic Performance Measure Budget Report can be found [here](#).

The CPO has been an invaluable asset to the GAC and serves as the Governor's nonvoting liaison to the Committee pursuant to [2 V.S.A. § 970\(b\)\(2\)](#). The CPO further links the Executive and Legislative Branches by designating an employee in each agency of State government to be a performance accountability liaison (PAL) to the General Assembly. In accordance with [3 V.S.A. § 2312](#), a PAL is responsible for assisting the General Assembly with issues related to RBA.

I. Revising the Indicators Used in the State Outcomes Report

A. Summary

[3 V.S.A. § 2311\(b\)](#) sets forth the State's 10 outcomes:

- (1) Vermont has a prosperous economy.
- (2) Vermonters are healthy.
- (3) Vermont's environment is clean and sustainable.
- (4) Vermont is a safe place to live.
- (5) Vermont's families are safe, nurturing, stable, and supported.
- (6) Vermont's children and young people achieve their potential.
- (7) Vermont's elders live with dignity and in settings they prefer.
- (8) Vermonters with disabilities live with dignity and in settings they prefer.
- (9) Vermont has open, effective, and inclusive government.
- (10) Vermont's State infrastructure meets the needs of Vermonters, the economy, and the environment.

Subsection (c) of that section allows either the CPO or a standing committee of jurisdiction over an outcome to request that an indicator be revised. If GAC approves an indicator revision, the CPO will include that indicator in the next State Outcomes Report.

The GAC has taken testimony on what makes for a good indicator. To summarize, an indicator should have the following three powers:

- (1) *Communication power*, meaning that the indicator communicates to a broad and diverse audience.
- (2) *Proxy power*, meaning that the indicator says something of central importance about the outcome.
- (3) *Data power*, meaning the indicator is based on quality data that is timely, reliable, and consistent.

Moreover, the GAC has learned that having too many indicators for an outcome can overwhelm a person who would like to review an outcome's indicator data and have a general idea of how well the State is performing in reaching an outcome.

Therefore, the GAC has been working to narrow each outcome's indicators down to a *maximum of three to five* of the best indicators per outcome. To do this, GAC has been taking testimony from the Executive Branch PALS in order to obtain their expertise in suggesting the main indicators for an outcome that have communication, proxy, and data power. The GAC's current proposed indicators for the outcomes are set forth in Attachment A of this report.

Readers will see that some outcomes overall or individual indicators are highlighted in yellow. This is to alert readers that these are *tentative* indicators for the

outcome that the GAC has approved during 2017 Adjournment, and GAC is specifically seeking the feedback of committees of jurisdiction to determine whether these are the best available indicators for each outcome before making a final decision on indicator approval.

B. Recommendation

Standing committees of jurisdiction should review and provide feedback on GAC's proposed indicator data for the State's outcomes set forth in Attachment A of this report, because the final indicators will be reported on in the next annual State Outcomes Report required by [3 V.S.A. § 2311](#). As discussed above, this indicator data helps show how well the State is performing, which makes Vermont State government more accountable to Vermonters. Moreover, as discussed below, the GAC is recommending that this indicator data be used in the legislative process to help inform legislative decisions. Therefore, committees of jurisdiction over an outcome should feel that the indicators for that outcome provide the best available data to help drive their work.

II. Using Results-Based Accountability in the Legislative Process

A. Summary

As discussed above, GAC recommends that standing committees of jurisdiction review and provide feedback on the proposed indicators for the outcomes within their jurisdiction. Committees could then use these indicators when considering bills that have been referred to them.

The benefit of having the right indicators in place for each outcome is that, when a bill comes before a committee, the committee can ask 1) what outcome the bill is meant

to address; and 2) what indicator data may be improved by the bill (which therefore could help the State make progress in reaching the outcome).

B. Recommendation

Standing committees of jurisdiction should conduct their committee work with a focus on results-based accountability, which includes being familiar with the State Outcomes Report and discussing how proposed legislation would have a positive impact on the State's outcomes and their indicator data.

To start to embed RBA in the committee process, a committee can discuss these three questions:

- (1) What are the outcomes that our committee's jurisdiction contributes to achieving?
- (2) What indicator(s) does our committee need to monitor to gauge progress made in Vermont?
- (3) How is Vermont currently performing on this indicator, and what is the trend in this indicator data?

Then, with that knowledge, the committee can use RBA to help inform its decisions on bills before the committee. To do so, a committee can ask the following questions during deliberation of a bill:

- (1) What are we proposing to do in this bill?
- (2) What outcome(s) is this bill meant to help achieve?

(3) What indicator(s) for those outcome(s) would this bill help to improve over time?

(4) How is Vermont currently performing on these indicator(s), and what is the trend in indicator data?

(5) Who are the partners that have a potential role to play in ensuring this bill will succeed?

(6) How do we know that the strategy in this bill will work? What would it take to succeed?

(7) How will we know if this bill will make improvements over time?

III. Performance Notes in Bills

A. Summary

Bills may currently be accompanied by a separate fiscal note that describes the fiscal impact of legislation.

However, GAC is pursuing the idea of performance notes for bills that describe the results the bill is meant to achieve and how success in reaching those results could be measured.

For example, a performance note may be in the form of a Findings, Purpose, and Intent section of the bill to generally describe 1) the issue the State is currently facing (Findings); 2) that the bill is meant to address this issue (Purpose); and 3) that the bill is meant to make a discernible, quantitative impact on that issue by impacting indicator data described in the bill and predicting the expected change in indicator data (Intent).

In general, a bill would refer to the indicator data set forth in the State Outcomes Report in that Intent portion of the bill, or in special situations, a bill may require a State agency to report back in future years on special data it collects to analyze whether the bill has made an impact.

B. Recommendation

Legislators and committees should consider including performance notes in appropriate bills. A performance note would generally describe the issue the bill is designed to address, the impact the bill is meant to have, and how Vermonters could measure that impact in the future. GAC is currently discussing specifics regarding this recommendation. However, the GAC's overall goal in making this recommendation is to help ensure that legislation will make a positive, measurable impact on Vermonters' quality of life.

IV. The Executive Branch's Efforts in Performance Improvement

Not only does the Administration collect and report on the indicator data set forth in the [State Outcomes Report](#) and on the performance measure data set forth in the [Programmatic Performance Measure Budget Report](#), it has combined RBA with Lean (a tool that focuses on eliminating waste in the business process) for an overall performance accountability platform called PIVOT, which stands for the Program to Improve Vermont Outcomes Together.

As described on the [PIVOT website](#), the goal of PIVOT is to break down silos within State government to have a broader view of government that asks:

- What services do we provide (service domains)?

- How do we deliver those services (programs)?
- What does it take to manage programs (activities and processes)?

The CPO is charged with overseeing the implementation of PIVOT and its related State Strategic Action Plan that has the goal of improving programmatic processes and results, which should ultimately feed up into improved indicators that get the State closer to achieving its desired population-level outcomes.

B. Recommendation

The General Assembly should become more familiar with the efforts the Administration has undertaken to be more accountable regarding the State's performance on behalf of Vermonters. These efforts include the Governor's Program to Improve Vermont Outcomes Together (PIVOT) and an updated State Strategic Action Plan. The Legislative and Executive Branches should collaborate in order to improve Vermonters' quality of life, since the Legislative Branch creates policy and the Executive Branch carries out that policy. Understanding how its policies are administered should help the Legislative Branch in crafting new policy.

V. Lessons Learned in Governmental Structure as a Result of EB-5

A. Summary

The GAC took testimony regarding the EB-5 program at its August and October meetings. GAC heard from the Commissioners of Economic Development and of Financial Regulation at both of those meetings and from a UVM professor of accounting services at its October meeting.

To summarize, the EB-5 program allows foreign investors to obtain a U.S. green card in exchange for putting \$500,000 toward creating private sector jobs. The federal government has ultimate oversight of regional EB-5 centers and, while those regional centers are usually private endeavors, Vermont State government took on both a promotional and regulatory role via its Agency of Commerce and Community Development. However, two private developers and a financial firm participating in the program are alleged to have engaged in a complex, Ponzi-like scheme to defraud the investors. The State's Department of Financial Regulation later became involved in overseeing the program, and the alleged fraud scheme was ultimately discovered.

The goal of GAC taking testimony regarding this issue was to learn lessons regarding governmental structure so that the alleged fraud committed in the State's EB-5 program is not repeated in a future State program.

The Commissioner of Economic Development advised that one general lesson learned is that the same State entity should not both promote and regulate a program.

The Commissioner of Financial Regulation advised the GAC of three main lessons learned:

- 1) There should have been ***more resources*** for oversight. In this case, the Agency of Commerce and Community Development did not have the human resources to appropriately monitor the program.
- 2) There should have been ***more authority*** to engage in oversight. In this case, the Department of Financial Regulation used its subpoena power to obtain answers, whereas the Agency did not have that authority.

3) The State should have provided ***more regulatory expertise***. In this case, the Department had the financial expertise that the Agency lacked.

In her testimony, UVM Professor of Accounting Services Joanne Pencak advised that internal financial controls are a necessity when other people's money is involved in any program, and that the need for internal financial controls should be a tone that is set at the top. Moreover, she recommended that there be compliance education for people involved in these types of financial activities. And, importantly, an external financial auditor should have the authority to audit and report to an external audit committee that is separate from any promoter of such a program. (For example, in the EB-5 scenario, the Department of Financial Regulation acted like an external audit committee.) Such an audit should not only audit financial statements, but also the internal financial controls in place.

Professor Pencak added that, in general, the State should consider a program's risk, cost, and impact, and determine to whom regulators and promoters are reporting. She advised that the State should consider how big the risk is of a potential conflict of interest, and whether the impact of such a risk coming to fruition would cost more than the cost of setting up internal financial controls to prevent that risk.

Recommendations

Vermont State government should learn from the fraud alleged to have been committed in the State's EB-5 program in order to structure Vermont's government in a manner that would avoid a repeat of such an occurrence. The GAC notes that the appropriate shift in authority to the Department of Financial Regulation in the EB-5 program has already occurred, and that the State has been successful in reaching a

settlement with the financial firm Raymond James in order to make whole the individuals and businesses that were impacted by the alleged fraud. However, moving forward, GAC makes the following recommendations:

- (1) If a program involves securities, the Department of Financial Regulation should be involved.
- (2) In any program, the State should consider the worst-case scenario and prepare for it. The State should consider the risks involved, and then determine which entities of State government should handle those risks.
- (3) The same State entity should not both promote and regulate a program. Such a setup creates an inherent conflict of interest. If a program is promoted and regulated by a single department, at a minimum, there should be two separate people promoting and regulating, and they should report to different people.
- (4) The State should determine whether it has the resources and expertise to address some of the more complex financial situations. In any program, the State should ensure it has adequate human resources, expertise, and oversight authority.
- (5) Regarding oversight, if people think the State is paying attention, they are less likely to commit fraud. Prevention is better than treatment.
- (6) The State should never let its guard down. Just because a program might result in the successful completion of projects, the State must look beyond the surface.
- (7) While it may be impossible to prevent every risk, the State must be careful when it attaches its name to something, and it must trust but verify.

ATTACHMENT A: CURRENT OUTCOMES AND INDICATORS

(1) Vermont has a prosperous economy.

- (A) percent or rate per 1,000 jobs of nonpublic sector employment;
- (B) median household income;
- (C) percent of population living at or below 185% of the federal poverty level;
- (D) gross domestic product;
- (E) net new jobs; and
- (F) net new business establishments.

(2) Vermonters are healthy.

- (A) percent of adults 20 years of age and older who are obese;
- (B) percent of adults who smoke cigarettes;
- (C) percent of Vermonters age 18 and older who binge drank in last month;
- (D) number of persons who are homeless (adults and children);
- (E) rate of suicide per 100,000 Vermonters;
- (F) fall-related deaths per 100,000 adults age 65 and older; and
- (G) percent of adults with any mental health condition receiving treatment.

(3) Vermont's environment is clean and sustainable.

- (A) percent of public drinking water supplies in compliance with health-based standards;
- (B) total greenhouse gas emissions per capita, in units of annual metric tons of equivalent carbon dioxide per capita;
- (C) percent of Vermont's rivers and lakes (excluding Lake Champlain) that meet State water quality standards for fishing and for swimming;
- (D) changes in total phosphorus loading to Lake Champlain from Vermont sources in metric tons per year;
- (E) number of days air quality in Vermont posed a moderate or greater risk to sensitive populations; and
- (F) disposal rate of municipal solid waste in pounds per person per day.

(4) Vermont is a safe place to live.

- (A) rate of petitions granted for relief from domestic abuse per 1,000 residents;
- (B) rate of violent crime per 1,000 crimes;
- (C) rate of sexual assault committed against residents per 1,000 residents;
- (D) recidivism rate;
- (E) incarceration rate per 100,000 residents; and
- (F) number of first-time entrants into the corrections system.

(5) Vermont's families are safe, nurturing, stable, and supported.

- (A) rate of substantiated reports of child abuse and neglect per 1,000 children;
- (B) rate of children and youth in out-of-home care per 1,000 children and youth;

- (C) rate of reports of abuse, neglect, and/or exploitation of vulnerable adults recommended for substantiation per 1,000 vulnerable adults;
- (D) percent of residents spending less than 30% of income on housing; and
- (E) percent of Vermont households with food insecurity [placeholder].

(6) Vermont's children and young people achieve their potential.

- (A) percent of women who receive first trimester prenatal care;
- (B) percent of children ready for school in all four domains of healthy development;
- (C) percent of children below the basic level of fourth grade reading achievement under State standards;
- (D) percent of high school seniors with plans for education, vocational training, or employment;
- (E) percent of adolescents in grades 9–12 using marijuana within the last 30 days; and
- (F) percent of adolescents in grades 9–12 who had a suicide plan.

(7) Vermont's elders live with dignity and in settings they prefer.

- (A) AARP State ranking on long-term services and supports for older adults, people with physical disabilities, and family caregivers; and
- (B) hospice enrollment: percent of chronically ill Medicare decedents age 65 and older who were enrolled in hospice during the last six months of life.

(8) Vermonters with disabilities live with dignity and in settings they prefer.

- (A) estimated employment rate of Vermonters age 21-64 with all disabilities.

(9) Vermont has open, effective, and inclusive government.

- (A) percent of eligible and registered voters voting in the general election;
- (B) percent of State contracts and grants awarded that include performance measures;
- (C) number or percent of departments that are able to accept online payments;
- (D) number or percent of agencies or departments using an up-to-date website template; and
- (E) number of agencies and departments that have a policy regarding response time.

(10) Vermont's State infrastructure meets the needs of Vermonters, the economy, and the environment.

- (A) percent of Vermont covered by state-of-the-art telecommunications infrastructure;
- (B) percent of structurally-deficient bridges, as defined by the Agency of Transportation; and
- (C) percent of Vermont retail electric sales from renewable energy.